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In the
Supreme Court of the United States

RICHARD B. WILLIAMS and PEARL JOHNSON,
Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,
Respondents.

PATRICK E. GORMAN and DOROTHY GORMAN, et al.,
Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BARRY J. FREEMAN
PETER B. CAREY
One North LaSalle Street
Chicago, Illinois 60602
(312) 372-1462
Counsel for Petitioners.

EUGENE I. PAVALON
ROBERT F. COLEMAN
ROBERT S. ATKINS
Of Counsel.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Richard B. Williams and all persons similarly situated and Patrick E. Gorman and all persons similarly situated[1] petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

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[1] The trial courts' rulings in favor of these class plaintiffs have resulted in the creation of funds which now exceed $12,000,000.00 in segregated tax payments.

OPINION BELOW

The opinion of the Supreme Court of Illinois, is reported at *Williams* v. *City of Chicago,* 66 Ill. 2d 423, 362 N.E.2d 1030 (1977), and appended as Appendix A. The opinion of the Appellate Court of Illinois is reported at *Williams* v. *City of Chicago,* 36 Ill. App. 3d 216, 343 N.E. 2d 539 (1976), and appended as Appendix B.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on March 23, 1977. The Supreme Court of Illinois denied the Petition for Rehearing filed by plaintiffs-appellees on May 26, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

(1) Whether the provisions of the Chicago Transaction Tax, which taxes non-residents of the City of Chicago at a lower rate than residents, unconstitutionally discriminates against residents in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

(2) Whether the provision of the Chicago Transaction Tax Ordinance which subjects the lease of only certain kinds of personal property to taxation creates an arbitrary and unreasonably discriminatory classification in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATUTE INVOLVED

Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§ 200.1 *et seq.* (1973).

The relevant portions of the statute are cited in Appendix C.

STATEMENT

The Chicago Transaction Tax Ordinance, enacted by the City of Chicago pursuant to its home rule powers under the 1970 Illinois State Constitution, imposes a tax on transactions consummated in the City of Chicago involving the transfer of real estate and the lease or rental of certain types of personal property.[2] The ordinance is distinguished by two drafting oddities. First, although the ordinance was apparently meant to apply to "the lease or rental of any personal property," Municipal Code of Chicago, §200.1-2A (1973), the term "personal property" is limited in its definition to only certain itemized tangible property, Municipal Code of Chicago §200.1-2A (5) (a) and (b) (1973). By defining the words "personal property" exclusively, rather than inclusively, the ordinance sets up the perplexing dichotomy of taxing the lease of duplicating or copy machines, but not the lease of printing equipment. While the lease of chairs, carpets, and tables for one's home is taxed, the lease of the burglar alarm system that protects that property is exempt from the City ordinance. The lease of ice making machines are exempt from taxation, yet the lease of the

[2] The Chicago Transaction Tax Ordinance bears a remarkable similarity to the New York state statute this Court recently declared unconstitutional, albeit on commerce clause grounds, in *Boston Stock Exchange* v. *State Tax Commission,* ..... U.S. ..... 50 L.Ed. 514 (1977)

freezer that holds that ice is taxed. Because the ordinance's definition of "personal property" is an exclusive one, the ordinance creates classifications that draw distinctions without differences.

Secondly, the drafters of the ordinance pit residents of the City of Chicago against non-residents by taxing non-residents at a lower rate. Although the ordinance imposes the tax based upon the dollar amount of the particular transaction consummated, transactions made by non-residents of the City are taxed at lower rates than transactions made by residents. Commencing January 1, 1974, the rate applicable to non-residents is 95% of the tax rate applied to residents. The non-resident rate decreases each year on a sliding scale until January 1, 1978, when it reaches a permanent level of 50% of the rate paid by residents. Although the ordinance places the "ultimate incidence of and liability for payment" upon the lessee of personal property or the grantee or purchaser of real property, the lessor or grantor has the duty of collecting the tax and remitting it to the City. The Chicago Transaction Tax thus makes it possible for a non-resident, purchasing real estate in Chicago from a Chicago resident, to pay one-half the transaction tax that a resident of Chicago would have to pay for the same property, even if that individual were to purchase it from a non-resident seller. Although the incidence of taxation is meant to fall on the transaction itself, the ordinance, in essence, distinguishes between purchasers and lessees solely because of their residence.

The plaintiffs brought separate class actions in the Circuit Court of Cook County for a declaratory judgment and injunctive relief against defendants, the City of Chicago and its Director of Revenue, challenging the

constitutionality of the ordinance on various grounds. In the *Williams* suit, plaintiffs attacked those portions of the ordinance which imposed a tax on the lease or rental of personal property. The trial court denied the defendants' motion to dismiss the complaint, and on interlocutory appeal the appellate court held the tax ordinance invalid on the grounds that it created an unconstitutional classification in defining the types of personal property lease transactions subject to the tax. The Supreme Court of Illinois then allowed defendants' petition for leave to appeal.

In the *Gorman* suit, plaintiffs challenged the provisions of the ordinance relating to the tax on real estate transfers. The trial court allowed plaintiffs' motion for summary judgment and entered an order declaring the ordinance unconstitutional as applied to transfers of real property on the ground, *inter alia,* that it arbitrarily taxed non-residents of the city at a lower rate than residents.

The court enjoined the city from disbursing taxes collected except into a segregated fund. Currently, the funds in *Williams* and *Gorman* exceed $12,000,000.00.

The defendants, in *Gorman,* filed a notice of appeal and the Supreme Court of Illinois allowed plaintiffs' motion for direct appeal to the Supreme Court, and for consolidation with the appeal in *Williams.*

The Supreme Court of Illinois reversed the judgment of the Appellate Court, in *Williams,* and the trial court, in *Gorman,* on the grounds that the ordinance did not unreasonably classify which personal property transactions would be subject to the tax, and the tax differential favoring non-residents was not arbitrary. Subsequently, that Court denied plaintiffs' petition for rehearing.

REASONS FOR GRANTING THE WRIT

This case presents a scheme of state taxation involving palpably arbitrary classifications of both the persons subject to the tax and the transactions upon which the tax is imposed. While petitioners recognize that the Equal Protection Clause accords state legislatures broad leeway in classifying for taxation purposes, the classifications under challenge here are devoid of any conceivable rational basis to sustain them.

In the *Williams* case, the transaction which is the subject of the tax consists of the lease or rental of items of personal property. The invidious discrimination arises because the ordinance taxes the lease or rental of certain items of personal property, but exempts from taxation the lease or rental of similarly situated items of property. For example, the ordinance taxes the lease or rental of all items of construction or demolition equipment, but does not tax the lease or rental of other types of industrial equipment and industrial machinery. Similarly, the ordinance imposes a tax on the lease or rental of office and computing equipment, but excuses from taxation the lease or rental of similar items of equipment such as printing equipment and telephone equipment. There is simply no conceivable rational basis for the difference in treatment the ordinance accords to these various items of similar personal property.

Nor is there any rational basis with respect to the classification of the persons subject to the tax in both the *Williams* and the *Gorman* cases.[3] Where the transaction consists of the lease or rental of personal property, as in *Williams*, the ultimate incidence of the tax falls upon the lessee. Where the transaction consists of the transference of title to real property, as in *Gorman*, the grantee or purchaser bears the burden of the tax.

[3] In *Gorman*, petitioners raise no challenge to the ordinance in respect to the types of transactions subject to the tax. This is because the portion of the ordinance involved in *Gorman* imposes a tax on transactions consisting of the transference of title to *all* real property,

The amount of the tax, however, varies depending upon the residence of the particular taxpayer. In the case of a taxpayer who is a non-resident of the City of Chicago, the tax rate is substantially lower than that imposed upon an identical transaction in which the taxpayer happens to be a resident of the City of Chicago. As of January 1, 1978, the rate for non-residents is 50% that of the rate for resident taxpayers. This lower rate is applicable to non-residents regardless of their role in the transaction, or the size or type of transaction. It represents the purest form of invidious discrimination.

Petitioners recognize the heavy burden placed upon those who challenge state taxation schemes on equal protection grounds. In describing the limits of the Equal Protection Clause on state power in this area, this Court has employed the phrase "palpably arbitrary or "invidious." *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 360 (1973). Too, this Court has sustained state tax laws because challenges failed to demonstrate that the classifications created were "arbitrary or capricious," *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 284 (1932), "invidious or palpably arbitrary," *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 520 (1959), or

[3] (Continued)
whether residential, commercial or industrial. Thus, so far as the *Gorman* plaintiffs are concerned, the ordinance contains no invidious classifications with respect to the transactions upon which the tax is imposed.

"hostile and oppressive" *Madden* v. *Kentucky,* 309 U.S. 83, 88 (1940). In *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 41 (1973), this Court reiterated the strictness of the Equal Protection test in the context of state tax laws:

> "It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. . . . [T]he presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes."

Despite the leeway possessed by the states in this area and the heavy burden borne by those who would challenge state taxation schemes, there is a point beyond which states may not go without transgressing the Equal Protection Clause. In *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527 (1959), this Court defined that point as follows:

> "The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the taxations.'"

With respect to the residency classification in the transaction tax ordinance, the lower rate provided to a non-resident purchaser or lessee simply does not rest upon a difference "having a fair and substantial relation to the object of the legislation." The classification challenged here arbitrarily discriminates against resident taxpayers by taxing non-residents at a lower rate. The discrimination transgresses the limits of the Equal Protection Clause because the residency of the taxpayer bears absolutely no relationship to the object of the legislation. The statutory objective is taxation of transactions involving the transfer or rental of real or personal property located or used in the City of Chicago. Although there is a difference between residents and non-residents of the City, that difference is wholly unrelated to the object of the legislation.

This palpably discriminatory feature of the ordinance is indistinguishable from the residency classification invalidated on equal protection grounds by this Court in *Wheeling Steel Corp.* v. *Glander,* 337 U.S. 562 (1949). There, Ohio imposed a tax on foreign corporations' accounts receivable derived from sales of goods manufactured within the state. Identical accounts receivable owned by residents and domestic corporations were exempt from the tax. In striking down the classification in question, the Court stated:

> "It seems obvious that appellants were not accorded equal treatment, and the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner." *Wheeling Steel Corp.* v. *Glander,* 337 U.S. 562, 572 (1949).

The residency classification at issue here stands upon the same footing. A lower tax rate is accorded to non-residents without regard to the size or nature of the transaction being taxed, and regardless of the City of Chicago's relation to that transaction. The inequality of treatment arises solely because of the residency of the taxpayer and bears no relation to the objective of the legislation.

Moreover, none of the "conceivable rational bases" proferred by the City of Chicago provide the constitutional nexus between the residency distinction and the object of the tax. The City first suggests that the taxing discrimination is justified because a lower rate for non-residents reflects the fact that residents are likely to make greater use of services provided by the City and therefore should be taxed at a higher rate. To say that a non-resident who purchases or rents property located in the City of Chicago, for use in the City of Chicago, does not utilize the services of the City to the same degree that a resident does with respect to that property is patently false. City services, such as water, police and fire, would be at the same level regardless of the property owner's residence. More importantly, it is not the property which is being taxed, but rather transactions involving the sale or lease of such property. Such transactions in themselves bear no relationship whatsoever to the services offered by the City.

It is equally absurd for the City to suggest that a lower tax rate for non-residents encourages them to purchase or rent property in the City of Chicago. To be sure, such a suggestion was found by this Court, in *Allied Stores of Ohio* v. *Bowers, supra,* sufficient to justify a different tax for residents and non-residents. However, in *Allied Stores of Ohio,* the state could reasonably justify its tax scheme as an incentive to non-resident investment since the tax was a property, rather than a transaction, tax and the favorable treatment accorded non-residents was a total exemption from taxation. By contrast, in the instant case, no tax was imposed upon real estate and personal property transactions prior to the enactment of the Chicago Transaction Tax Ordinance. When an exemption from taxation is compared with

the imposition of a tax, albeit at a lower rate, the fallacy of the City's incentive argument becomes obvious. It is implicit in the City's argument that any tax will discourage the purchase or rental of property. Accordingly, the imposition of a lower tax on non-residents simply will not encourage them to purchase or lease real or personal property in the City of Chicago. More logically, it will discourage such purchasing and leasing.

Finally, the City suggests that administrative convenience is a justification for the differential tax rate. The City argues that a lower tax rate encourages non-residents to pay the tax. Again, any tax, albeit lower, can in no way constitute an inducement to pay the tax. More importantly, as the Supreme Court of Illinois indicated in its opinion, the obligation to collect and pay the tax is borne by the grantor or lessor, and the residency of the grantor or lessor is irrelevant. The non-resident lessee or purchaser, upon whom the incidence falls, and whose residency determines which tax rate applies, simply does not collect and remit the tax. That obligation belongs to the other party to the transaction taxed. Thus, the administrative convenience argument is totally specious because the non-resident taxpayer has nothing to do with the collection and remittance of the tax. *See, e.g., WHYY* v. *Glassboro,* 393 U.S. 117, 120 (1968).

What has been said of the ordinance's palpably arbitrary classification of the persons taxed applies with equal force to the ordinance's classification of the transactions subject to the tax.[4] A state is certainly free to impose a tax only upon certain property or callings, but

[4] As indicated, a classification of the persons taxed is challenged in both the *Williams* and *Gorman* cases, while the challenge to the classification of the transactions subject to the tax arises only in the *Williams* case.

the classification thereby created must be based upon some real and substantial difference between those taxed and those exempted from taxation. *Cf. Nashville, C. & St. L. R. Co.* v. *Browning,* 310 U.S. 362 (1940); *Rapid Transit Co.* v. *New York,* 303 U.S. 573 (1938). The constitutional vice of the ordinance in question, in *Williams,* and the characteristic which distinguishes it from the classifications sustained by this Court in other cases, is that there is no perceptible difference between the leasing transactions subject to the tax and those upon which no tax is imposed.

It is important to remember that the ordinance here is not a tax upon various classes of property, but is a tax upon leasing and rental transactions themselves. Thus, there can be no basis for distinguishing between a tax upon the lease or rental of construction and demolition equipment, and a tax upon the lease or rental of other industrial equipment and machinery. While there may be some small difference between construction and industrial equipment, there is no difference between the lease or rental of those items of equipment. Yet, in one instance, there is a tax, and in the other there is none. Clearly, the Equal Protection Clause precludes such arbitrary classifications.

In conclusion, petitioners ask this Court to review, on equal protection grounds, a tax classification predicated upon residency alone, when the residency of the taxpayer bears absolutely no relationship to the nature of the transaction being taxed. Also, petitioners seek review, in *Williams* only, of a taxing scheme which imposes a tax upon some lease or rental transactions, and exempts other lease or rental transactions, without regard to *any* difference in those transactions.

CONCLUSION

For the foregoing reasons, petitioners respectfully urge that this Petition for a Writ of Certiorari to the Supreme Court of Illinois should be granted.

Respectfully submitted,

BARRY J. FREEMAN
PETER B. CAREY
One North LaSalle Street
Chicago, Illinois 60602
(312) 372-1462
Counsel for Petitioners.

EUGENE I. PAVALON
ROBERT F. COLEMAN
ROBERT S. ATKINS
Of Counsel.

APPENDIX A, B, C

APPENDIX A

Richard B. WILLIAMS et al., Appellees,

v.

The CITY OF CHICAGO et al., Appellants.

Patrick E. GORMAN et al., Appellees,

v.

The CITY OF CHICAGO et al., Appellants.

Nos. 48399, 48611.

Supreme Court of Illinois.

March 23, 1977.

Rehearing Denied May 26, 1977.

UNDERWOOD, Justice.

These consolidated appeals are concerned with the constitutionality of the Chicago Transaction Tax Ordinance, which imposes a tax on transactions consummated in the city of Chicago involving the transfer of real estate and the lease or rental of certain types of personal property. (Municipal Code of Chicago, ch. 200.1.) The plaintiffs brought separate class actions in the circuit court of Cook County for a declaratory judgment and injunctive relief against defendants, the city of Chicago and its Director of Revenue, challenging the constitutionality of the ordinance on various grounds. Cause No. 48399 involves a suit filed by plaintiffs Richard B. Williams and Pearl Johnson attacking those portions of the ordinance dealing with the tax on the lease or rental of personal property. The trial court denied the defendants' motion to dismiss the complaint, and on interlocutory appeal the appellate court held the tax ordinance invalid on the grounds that it created an unconstitutional classification in defining the

types of personal property transactions subject to the tax. (*Williams* v. *City of Chicago* (1976), 36 Ill.App.3d 216, 343 N.E.2d 539.) We allowed defendants' petition for leave to appeal. In cause No. 48611, plaintiffs Patrick E. Gorman and Dorothy Gorman brought suit challenging those provisions of the ordinance relating to the tax on real estate transfers. The trial court allowed plaintiffs' motion for summary judgment and entered an order declaring the ordinance unconstitutional as applied to transfers of real property on the grounds that it arbitrarily taxed nonresidents of the city at a lower rate than residents and was vague as to the circumstances which would make the lower tax rate applicable. The court enjoined the city from further collecting the tax on real estate transfers or from disbursing taxes already collected except into a segregated fund. The court further determined that those who had paid the tax constituted a class of persons entitled to a refund of the taxes they had paid. The defendants filed notice of appeal, and we allowed plaintiffs' motion for direct appeal to this court pursuant to Supreme Court Rule 302(b) (58 Ill.2d R. 302(b)) and for consolidation with the appeal in *Williams*.

The Chicago Transaction Tax Ordinance was enacted by the city of Chicago pursuant to its home rule powers under the 1970 State Constitution. It imposes a tax based on the dollar amount of all transactions consummated in the city of Chicago after January 1, 1974, involving the transfer of title to real property situated within the city and the lease or rental of specified items of personal property. Transactions made by nonresidents of the city are taxed at lower rates than transactions made by residents. Commencing January 1, 1974, the rate applicable to nonresidents is 95% of the tax rate applied to residents. The nonresident rate decreases each year on a sliding scale until January 1, 1978, when it reaches a permanent level of 50% of the rate paid by residents. The ordinance specifies that the "ultimate incidence of and liability for payment of said tax shall be borne by" the lessee of personal property or the grantee or purchaser of real

property, respectively. However, the lessor or grantor has the duty of collecting the tax and remitting it to the city. In cases where taxes "have been paid in error" to the city, a procedure is set forth for credits and refunds to persons who have collected and remitted the tax. However, there are no provisions authorizing lessees or grantees who bear the burden of the tax to file claims for refunds or pay taxes under protest.

In view of the conclusions reached by the appellate court concerning the classification of personal property set forth in the ordinance, it is appropriate to examine those provisions in some detail. Section 200.1-2 provides in pertinent part:

> "200.1-2. There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on all transactions designated herein, including sales, agreements of sale, agreements to sell, memoranda of sales, deliveries or transfers of the objects of such sales, agreements, or memoranda, leases and lease or rental agreements and memoranda, as follows:
>
> A. Transactions consummated in the City of Chicago involving the lease or rental of any personal property, valued in money, • • • made after the 1st day of January, 1974 • • •."

Section 200.1-2(A) contains 5 subsections. Subsection 1 specifies the tax rate; subsection 2 provides that the incidence of tax and liability for its payment shall be borne by the lessee but that the person making or effectuating the lease or rental has the duty to pay the tax to the city; subsection 3 provides for payment of the tax through purchase of tax stamps; subsection 4 specifies that lease or rental agreements must contain information including an identifying number; and subsection 5 defines the personal property subject to the tax as follows:

> "5(a) As used in paragraph 200.1-2A, personal property means motor and other vehicles, which shall

include but are not limited to automobiles, automobile trailers, bicycles, motor driven bicycles, motorcycles, buses, trucks, truck tractors, truck trailers, construction and demolition equipment, which shall include but is not limited to ditch digging equipment, well boring apparatus, road construction and maintenance equipment such as spreaders, mixers, loaders, graders, rollers, scarifiers, scrapers, earth movers, power shovels, cranes, compressors, concrete mixers, garden and landscaping equipment, ladders, floor machines, searchlights, floodlights, hand and electrical tools, spraying equipment, and scaffolding; household and office equipment, which shall include but is not limited to carpets and rugs, chairs and tables, chinaware and glassware, furniture, beds, television and radio, washing machines, dryers and ironers, water softening equipment; clothing, including but not limited to formal wear and other types of clothing; office and computing equipment, including but not limited to data processing equipment, computers, accounting and bookkeeping machines, adding and calculating machines, typewriters, addressing machines, dictating machines, duplicating machines, mailing machines, copy machines; and such miscellaneous equipment as musical instruments.

(b) As used in paragraph 200.1-2A, personal property shall also mean leased time on equipment not otherwise itself rented, such as leased time for use of calculators, computers, data processing equipment, tabulating equipment, accounting equipment, copying machines, duplicating machines, addressing machines, whether said leased time is fully or partially utilized."

The Williams complaint alleged that the plaintiffs were residents of the city of Chicago and on various occasions since January 1, 1974, had been charged and had paid the Chicago transaction tax when they leased automobiles under written lease agreements executed in the city of Chicago. They asserted the propriety of the suit as a class action and alleged that the Chicago transaction tax

violated the due process and equal protection clauses of the State and Federal constitutions; that the ordinance contained an unreasonable, arbitrary and discriminatory classification in that "the definition of the types and categories of personal property subject to the tax as set forth in Section 200.1-2(A)(5)(a), (b) fails to include many types, categories and articles of personal property, which are thereby exempt from taxation, including but not limited to such personal property as printing equipment, signs, ice making machines, burglar alarms, telephone equipment, industrial equipment and industrial machinery"; that the provisions of the ordinance requiring the city of Chicago residents to pay a greater tax than the tax imposed on nonresidents of the city of Chicago are discriminatory, arbitrary and unreasonable; that lessees of personal propetry cannot determine with reasonable assurance what transactions involving the lease or rental of personal property are subject to taxation since the terms used in the ordinance such as "transactions consummated in the City of Chicago," are vague, unclear and ambiguous; that lessors of personal property continue to collect the tax from plaintiffs and the members of the class which they represent and remit the tax to the defendant Director of Revenue for the city of Chicago; and that "[p]laintiffs have no remedy except by this action for injunctive relief to prevent the continuing irreparable injury currently being sustained by plaintiffs and members of the class." Plaintiffs prayed, *inter alia,* that the court declare the ordinance unconstitutional and void; that pending the trial of the action and until further order of court the defendant Director of Revenue for the city of Chicago be directed to hold the proceeds of the Chicago transaction tax in a separate fund and not distribute such taxes to the city of Chicago; that after trial of the action the court order in its final decree that the proceeds so held by the defendants be refunded to the persons who show proper proof that they have paid the tax and direct that the balance, less plaintiffs' costs, expenses and attorneys' fees, be paid to the city of Chicago; and that defendants and their successors in interest be permanently enjoined in

the final decree from collecting the Chicago transaction tax from and after the date of final decree.

The court allowed plaintiffs' motion for preliminary injunction enjoining the defendants from disbursing any moneys received from the collection of the Chicago transaction tax on the lease or rental of personal property except into a segregated fund to be maintained until further order of court. The defendants' motion to strike and dismiss the complaint on the grounds that the plaintiffs had no standing and had not alleged sufficient facts establishing the invalidity of the ordinance was denied, and it was from this order that the defendants brought an interlocutory appeal to the appellate court.

In the *Gorman* case the plaintiffs alleged that they were residents of the city of Chicago and on September 30, 1974, had purchased real property situated in Chicago as to which they had paid a tax in the amount of $50 as required by the Chicago Transaction Tax Ordinance. After asserting grounds for bringing a class action, the complaint alleged as to the tax on real estate transactions virtually the same infirmities as were alleged in the *Williams* case regarding the tax on personal property transactions; the prayers for relief were nearly identical.

The defendants' motion to strike and dismiss the complaint for lack of standing and failure to allege facts establishing the invalidity of the ordinance was also denied in this case, and the trial court allowed plaintiffs' motion for issuance of a preliminary injunction similar to that in the *Williams* case. The defendants subsequently filed their answer denying the material allegations of the complaint. The plaintiffs then filed a motion for summary judgment supported by an affidavit of Patrick E. Gorman which stated that at all pertinent times he and his wife Dorothy were residents of the city of Chicago; that they had purchased real property at 3180 North Lake Shore Drive in Chicago; and that in connection with the purchase of said real estate he and his wife had paid the Chicago Transaction tax in the amount of $50 in accordance with the terms of the ordinance. The trial court

allowed the motion and found that plaintiffs had standing to bring the action individually and as representatives of a class consisting of all purchasers or grantees of real property located within the city of Chicago who had paid or who had become liable for payment of the tax pursuant to provisions of the ordinance beginning January 1, 1974, and thereafter; that the Chicago Department of Revenue processes 40,000 real estate transaction tax declarations annually; that plaintiffs' claim was typical and representative of the class they sought to represent; "that the provisions of the said Ordinance providing for the transaction tax are vague and lacking specificity as to the circumstances which would make the lower tax rate applicable and as to when a transaction is 'consummated in the City of Chicago' for purposes of the said ordinance"; "that the classification contained in the ordinance of persons and property to be taxed is arbitrary and without a rational basis"; and "that an injunction enjoining the defendants from enforcing the provisions of the said transaction tax ordinance is the only adequate remedy available to the plaintiffs and the class which they represent." The court enjoined the defendants from enforcing the provisions of the transaction tax as it applied to transfers of title to real property located within the city but stayed its enforcement pending appeal. However, the court continued in effect its previous injunction enjoining defendants from disbursing any moneys received from the collection of the real estate transfer tax except into the segregated fund. The court further found that the plaintiffs and the members of the class they represent were entitled to repayment of the taxes paid on real estate transfers pursuant to the provisions of the ordinance in question and that the mechanism for such repayment would be subject to further order of the court at the conclusion of any appeal.

The principal thrust of plaintiffs' attack on the constitutionality of the ordinance is that the provisions defining the types of personal property subject to the tax and the provisions establishing a lower tax rate applicable to transactions involving nonresidents create unreasonable

and discriminatory classifications. They argue that such classifications are devoid of any rational basis and bear no relationship to the object of the tax.

It is well established that legislative bodies have very broad powers in establishing classifications defining the objects of taxation which will withstand constitutional attack so long as the classifications are reasonable. (*Lehnhausen* v. *Lake Shore Auto Parts Co.* (1973), 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351; *Titus* v. *Texas Co.* (1973), 55 Ill.2d 437, 303 N.E.2d 361; *Fiorito* v. *Jones* (1968), 39 Ill.2d 531, 236 N.E.2d 698; *Klein* v. *Hulman* (1966), 34 Ill.2d 343, 215 N.E.2d 268; *People ex rel. Holland Coal Co.* v. *Isaacs* (1961), 22 Ill.2d 477, 176 N.E.2d 889; see also Ill.Const.1970, art. IX, sec. 2.) The legislative determination as to those persons who are to be taxed must not be arbitrary (*City of Chicago* v. *Ames* (1937), 365 Ill. 529, 7 N.E.2d 294), and the classification must bear some reasonable relationship to the object of the legislation (*Modern Dairy Co.* v. *Department of Revenue* (1952), 413 Ill. 55, 108 N.E.2d 8). However, it is equally well settled that there is a presumption favoring the validity of classifications made by legislative bodies in taxing matters and that one who attacks them has the burden of proving such classifications to be arbitrary and unreasonable. (*Jacobs* v. *City of Chicago* (1973), 53 Ill.2d 421, 292 N.E.2d 401; *Thorpe* v. *Mahin* (1969), 43 Ill.2d 36, 250 N.E.2d 633; *Grenier & Co., Inc.* v. *Stevenson* (1969), 42 Ill.2d 289, 247 N.E.2d 606; *Doolin* v. *Korshak* (1968), 39 Ill.2d 521, 236 N.E.2d 897.) As was stated in *Department of Revenue* v. *Warren Petroleum Corp.* (1954), 2 Ill.2d 483, 490, 119 N.E.2d 215, 220: "The reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. [Citations.] The burden therefore rests on one who assails the statute to negate the existence of such facts." In the *Lake Shore Auto Parts Co.* case cited above, the United States Supreme Court similarly stated: "There is a presumption of constitutionality

which can be overcome 'only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.' [Citation.] • • • 'The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.' [Citation.]" 410 U.S. 356, 364, 93 S.Ct. 1001, 1006, 35 L.Ed.2d 351, 358.

In support of their argument that the ordinance contains an unreasonable and discriminatory classification of personal property transactions subject to tax, the plaintiffs in the *Williams* case rely upon what they consider to be a constitutional infirmity arising from the definition of the term "personal property" found in subsection 5 of section 200.1-2(A). They point out that section 200.1-2(A) speaks in terms of a tax being imposed upon transactions involving the lease or rental of "any personal property" but that subsection 5 defines the term "personal property" as including only those items of tangible personal property listed in that subsection. They argue that this definition for no discernible reason omits numerous items of personal property and that such omission is inconsistent with the clearly expressed intention of the framers of the ordinance to impose the tax on transactions involving the lease or rental of "any" personal property. They urge that this alleged inconsistency creates an irrational and unconstitutional classification which bears no reasonable relationship to the object of the tax and renders the ordinance void. The appellate court concurred with this view when it concluded:

> "It appears to us that the City, for some unknown reason, failed to insert the words 'but shall not be limited to' immediately following the words 'personal property means' in the Section 200.1-2[A](5)(a) definition of 'personal property.' However, the tax ordinance does not so read, and as it stands we can perceive no rational basis to justify the imposition of the tax upon the lease or rental of construction, demolition, household and office equipment where the tax is not imposed upon the lease or rental of many other

items; *e.g.*, printing, telephone and industrial equipment and machinery. We can only conclude that the distinction between the class of those items of personal property which are subject to the tax and those not included is not one based upon any real and substantial difference. [Citations.] Accordingly, we hold the tax ordinance to be invalid." 36 Ill.App.3d 216, 222-23, 343 N.E.2d 539, 544.

In our opinion, the foregoing construction assigns exaggerated and undue significance to the word "any" appearing in section 200.1-2(A) and tends to ignore, what seems to us, the plain intent of subsection 5 to define the term "personal property" as used in the ordinance. Viewed in its entirety the ordinance, in our judgment, does not express an intention to tax lease or rental transactions involving any and all personal property; instead, it has as its objective the taxation of transactions involving the lease or rental of those types of personal property defined in subsection 5. We find no inconsistency or ambiguity in these provisions and do not concur with the argument that the definition contained in subsection 5 is somehow contrary to the intent and object of the tax or that it reflects a mistaken or irrational omission which creates an unreasonable and arbitrary classification of transactions subject to tax.

Furthermore, we are of the opinion that neither the provisions of the ordinance taxing transactions involving the lease or rental of specified types of personal property nor those provisions which apply lower tax rates to transactions involving nonresidents are otherwise patently arbitrary or unreasonable. As we have noted earlier in this opinion, it was not necessary for the ordinance to explain on its face the reasons for classifying the objects of taxation or establishing a lower tax rate for nonresidents. Considerations of administrative convenience and expense of collection may have been involved. (*Paper Supply Co.* v. *City of Chicago* (1974), 57 Ill.2d 553, 317 N.E. 2d 3; *Titus* v. *Texas Co.* (1973), 55 Ill.2d 437, 303 N.E.2d 361; *Department of Revenue* v. *Warren Petroleum Corp.*

(1954), 2 Ill.2d 483, 119 N.E.2d 215; *People* v. *Deep Rock Oil Corp.* (1931), 343 Ill. 388, 175 N.E. 572.) It is conceivable that the city council may have determined it would be impractical to impose a tax on all leases or rentals of personal property, some of which might occur infrequently or be difficult and unduly expensive to administer. Or, it may have been thought that the tax would be unduly burdensome when applied to certain types of leasing transactions in view of the particular nature of the property or transaction involved or due to the existence of other forms of taxation or regulation which affect such property or transactions. The provisions of the ordinance applying a lower tax rate to real estate transactions involving nonresidents could reflect a determination by the city council that nonresidents make less use of city services than do residents and for that reason should be taxed at a reduced rate. These considerations furnish a sufficient justification for the classifications in question, and in our opinion the complaints in both cases failed to allege a sufficient factual basis to overcome the presumptive constitutionality of the ordinance.

Plaintiffs also argue that the ordinance is so vague, unclear and ambiguous that its application to various types of transactions is unreasonably indefinite, doubtful and uncertain, thereby precluding its interpretation and enforcement in a fair, nondiscriminatory and nonarbitrary manner. We do not agree. As was stated in *Paper Supply Co.* v. *City of Chicago* (1974), 57 Ill.2d 553, 580, 317 N.E. 2d 3, 17: "In this ordinance, as in many ordinances and statutes the provisions contain general language, and the variety of interpretations suggested is limited only by the ingenuity of counsel who attack them. This case is before us on the pleadings in declaratory judgment actions, and upon examination of the ordinance we conclude that there is no basis to anticipate that application of the provisions here attacked will present any undue difficulty. Should a set of facts present itself under which enforcement of the ordinance results in a deprivation of equal protection or due process, the matter can be adjudicated at that

time. Meanwhile as we said in *Mahin* v. *Baltis*, 34 Ill.2d 413, 216 N.E.2d 132, 'Factual and legal issues that may thereafter arise are not now present for decision.' 34 Ill.2d 413, at 421, 216 N.E.2d 132, at 137." We do not find the ordinance to be unconstitutionally vague or uncertain on its face and are of the opinion that the factual allegations of both complaints were insufficient to support a finding of unconstitutionality on these grounds.

For the above reasons, we hold that the trial court in each case erred in not granting the defendants' motion to dismiss the complaint. Accordingly, the additional questions raised on this appeal with respect to plaintiffs' standing to bring a class action challenging the constitutionality of the ordinance and seeking a refund of taxes paid become academic and need not be considered.

The judgment of the appellate court in cause No. 48399 and that of the trial court in cause No. 48611 are reversed. Each cause is remanded to the trial court with directions to enter an order granting defendants' motion to dismiss the complaint and for such further proceedings consistent with this opinion as may be appropriate.

Reversed and remanded.

APPENDIX B

36 Ill.App.3d 216

Richard B. WILLIAMS and Pearl Johnson,
Plaintiffs-Appellees,

v.

CITY OF CHICAGO, a Municipal Corporation,
and Marshall Korshak, Director of Revenue,
City of Chicago, Defendants-Appellants.

No. 61547.

Appellate Court of Illinois,
First District, Fifth Division.

Feb. 13, 1976.

SULLIVAN, Justice:

At the request of defendants, we allowed this interlocutory appeal pursuant to Supreme Court Rule 308 (Ill.Rev.Stat.1973, ch. 110A, par. 308.) At issue is the validity of a provision in Chapter 200.1 of the Municipal Code of Chicago (hereafter the tax ordinance) which imposes a tax upon transactions consummated in Chicago involving the lease or rental of personal property.[1] Plaintiffs are taxpayers who, as lessees of personal property on their own behalf and allegedly as representatives of a class, sought to enjoin the collection of taxes under the tax ordinance and a judgment declaring it invalid on constitutional grounds. The trial court, in denying defendants' motion to dismiss, certified four questions for our review, and we will address them in the order necessary for the disposition of this appeal.

[1] The tax ordinance also imposes a tax on the transfer of real property. The validity of such tax has not been challenged on this appeal and our opinion is limited to an inquiry only of the validity of the tax on transactions involving personal property.

The first question concerns whether plaintiffs' complaint states a cause of action in equity where it alleges that a city tax is unconstitutional because of unreasonable and discriminating classifications of property and persons subject to the tax.

It is the general rule that equity will not assume jurisdiction to grant relief where an adequate remedy at law exists. (*Clarendon Associates* v. *Korzen,* 56 Ill.2d 101, 306 N.E.2d 299; 7 I.L.P. Chancery § 31.) Defendants initially contend that plaintiffs have no cause of action in equity because they have an adequate remedy at law. In any event, defendants argue, the allegations of plaintiffs' complaint do not fall within any of the exceptions to the general rule under which equity will act regardless of available legal remedies. These exceptions are set forth in *Clarendon* and allow equitable relief where the tax is either (1) unauthorized by law; or (2) levied upon property exempt from taxation.[2] Plaintiffs maintain that they have no adequate remedy at law but, assuming that there was such a remedy, that their complaint alleges many particulars in which the tax violates the state and federal constitutions and, by reason thereof, was unauthorized by law—the first exception to the general rule.

On oral argument, defendants' counsel stated that the adequate remedy at law available to plaintiffs appears in section 200.1-8A of the tax ordinance, which provides as follows:

> "Whenever it appears that an amount of tax, interest or penalty has been paid in error to the Department of Revenue by a person, association, firm, partnership, corporation, receiver, executor, conservator, trustee or other representative appointed by any court (hereinafter referred to as 'taxpayer'), who is required or

[2] The court in *Clarendon* also stated at page 108, 306 N.E.2d at page 303: "There will be cases of fraudulently excessive assessments where the remedy at law will not be adequate and injunctive relief should then be available."

> authorized to collect and remit such transaction tax, whether such amount be paid through a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department of Revenue on forms provided by said Department for that purpose."

This section also requires adjudication of the claim. A protest procedure is provided for those "taxpayers" dissatisfied with the Department's initial determination.

We believe that a close examination of the language in section 200.1-8 indicates that the administrative procedure set forth therein is intended solely for the benefit of the lessor. The remedy outlined is only available to the "taxpayer", who is "required or authorized to *collect and remit* such transaction tax." (Emphasis added.) Only the lessor is required or authorized to collect and remit the tax, and we therefore interpret the procedure for credits and refunds in section 200.1-8 to be a legal remedy available only to the lessor and not to the lessee herein. (Cf. *Crane Construction Co.* v. *Symons Clamp and Mfg. Co.,* 25 Ill.2d 521. 527, 185 N.E.2d 139.) This interpretation is supported by other provisions of the tax ordinance. Section 200.1-8E provides, in the first instance, not for a repayment of the funds erroneously collected but for a letter of credit to be used to offset future collections of the tax. Such a letter would only be of value to a lessor who would be collecting and remitting future taxes. Likewise, section 200.1-9C provides that the Mayor may, after a hearing, revoke all city licenses held by the tax evader as a penalty for failure to pay the tax. Such licenses are, of course, held by lessors rather than by lessees. In view thereof, we believe it is evident that the intent of the tax ordinance was to provide administrative review only for the lessor who "collects and remits" the tax, and therefore the administrative remedy is not available to lessees. Applying this reasoning to the instant case, we conclude that the remedy provided in section 200.1-8 is not available to the plaintiff-lessees here and, further, inasmuch as this is the only remedy at law suggested by defendants and because we have found none in the ordinance, we hold

that plaintiffs here do not have an adequate remedy at law and that they have stated a cause of action in equity.

Having so found, it will not be necessary to determine whether the allegations of plaintiffs' complaint fall within any of the *Clarendon*[3] exceptions set forth above which assume the existence of an adequate remedy at law.

The second question certified inquires whether a lessee of personal property who pays, but not under protest, a city tax to the lessor on transactions involving the lease or rental of certain items of personal property, has standing to challenge the constitutionality of the tax ordinance which places the ultimate incidence of and liability for payment of the tax on the lessee and the duty of collecting the tax on the lessor and, where the ordinance makes no provision, for payment of the tax under protest.

Defendants contend that because plaintiffs did not protest the taxes, the payments were voluntary and thus they had no standing to challenge the validity of the ordinance. The case principally relied upon by defendants is *Snyderman* v. *Isaacs,* 31 Ill.2d 192, 201 N.E.2d 106. However, we do not believe that case is supportive of defendants' position. *Snyderman* did not involve the question of standing to challenge the *validity* of a tax but was an attempt by a lessee of an automobile to maintain a class action on behalf of all lessors to obtain a credit for taxes paid under a statute which had been found to be invalid subsequent to the payment of the tax. There, the general rule was applied that taxes voluntarily though erroneously paid

[3] It should be noted that in *Illinois Bell Telephone Company* v. *Allphin,* 60 Ill.2d 350, 326 N.E.2d 737, it was held that the first and second *Clarendon* exceptions, originally adopted in *Owens-Illinois Glass Co.* v. *McKibbin,* 385 Ill. 245, 52 N.E.2d 177, are no longer applicable in those situations covered by the Administrative Review Act. However, in the more recent decision of the supreme court in *North Pier Terminal Co.* v. *Tully,* Ill., 343 N.E.2d 507 (1975), an action involving the legality of real property taxes, the court treated the *Clarendon* exceptions as being still applicable.

cannot be recovered. Here, plaintiffs' action does not seek a refund of taxes paid but rather sought a declaration that the tax is unconstitutional and a permanent injunction against its further collection.

We believe that *Crane Construction Co., supra,* is controlling here. In that case, Symons, a lessor of property, was required to collect use taxes from its lessee (Crane) and to remit the Retailer's Occupation Tax to the Department of Revenue. No provision for protest by a lessee was provided in the statute. Plaintiff filed a complaint in chancery against its lessors (Symons) and joined as defendants the Director of Revenue, the State Treasurer and the Attorney General. The complaint alleged that unless equitable relief was granted to plaintiff and others similarly situated, they would be required to pay use taxes to Symons under duress and, unless restrained, they feared that the lessor would forward the taxes so received to the Department of Revenue without making such payments under protest or otherwise protecting the rights of plaintiff and other members of the class. Defendants contended that Crane had no standing to challenge the tax. The court held, however, that inasmuch as the statute provided no means of protest to lessees subject to the tax, they had standing to bring the action in their own right, stating 25 Ill.2d at pages 527-28, 186 N.E.2d at page 143:

> "Although the retailers' occupation tax is not laid on plaintiff, the use tax is. It pays use tax, however, not directly to the State, but to its suppliers, in this case Symons Clamp & Manufacturing Company. Symons collects use tax from Crane and remits retailers' occupation tax to the Department of Revenue. Crane obviously has standing to challenge the validity and applicability of the use tax and is not compelled to rely upon its lessor, Symons, to protect its interests. To the extent to which the validity of the use tax and its application to plaintiff is dependent upon the validity of the retailers' occupation tax, it may also challenge that tax. In this case, plaintiff has followed an appropriate method for litigating questions which it has a right to have determined."

Here, also, in the absence of any means of administrative review, reason dictates that the lessees who bear the burden of the tax have standing to challenge its validity.

In the third question certified, we are asked to determine whether the tax ordinance in question violates constitutional equal protection provisions because Section 200.1-2A5(a) and (b) applies only to the transfer of certain types of personal property and because Section 200.1-3 taxes non-residents of the City of Chicago at a rate lower than residents.

We initially note that Section 200.1-2A is general in nature, providing that the tax shall be imposed upon "transactions consummated in the City of Chicago involving the lease or rental of *any* personal property." (Emphasis added.) The term "personal property" is defined in Section 200.1-2A(5)(a) and (b), as follows:

> "(a) As used in paragraph 200.1-2A, personal property means motor and other vehicles • • •, construction and demolition equipment • • • ; household and office equipment • • • ; clothing • • • ; office and computing equipment • • • ; and such miscellaneous equipment as musical instruments.
>
> (b) As used in paragraph 200.1-2A, personal property shall also mean leased time on equipment not otherwise itself rented • • •."

It is obvious that this section omits, for no discernible reason, the leases or rentals of numerous other items of personal property.

Plaintiffs first challenge the validity of the tax because it fails to include in the definition of personal property items such as printing equipment, signs, ice making machines, burglar alarms, telephone equipment, industrial equipment and machinery. They argue that no rational basis exists for this exclusion. Also, on equal protection grounds, plaintiffs challenge the provision of Section 200.1-3A, which provides that non-residents of the City of Chicago shall pay the tax at a lesser rate than resi-

dents. In 1974 non-residents paid only 95% of the rate applied to residents; in 1975, 90%; and in subsequent years, the rate continues to decrease to its final level of 50%.

It is well established that the legislature has broad powers to establish reasonable classifications in defining subjects of taxation. (*Klein* v. *Hulman,* 34 Ill.2d 343, 346, 215 N.E.2d 268; *People ex rel. Holland Coal Co.* v. *Isaacs,* 22 Ill.2d 477, 176 N.E.2d 889.) It may define a general class which is subject to an occupation tax and then specifically remove a subclass (*Bode* v. *Barrett,* 412 Ill. 204, 106 N.E.2d 521; *Modern Dairy Co.* v. *Department of Revenue,* 413 Ill. 55, 108 N.E.2d 8), or it may merely define a subclass without naming the general class (*Fiorito* v. *Jones,* 39 Ill.2d 531, 236 N.E.2d 698; *People* v. *Deep Rock Oil Co.,* 343 Ill. 388, 175 N.E. 572.) A home rule unit enacting taxing provisions is likewise entitled to the same broad powers to establish reasonable classifications in defining subjects of taxation. (Ill.Const.1970, Art. VII, Sec. 6.) However, regardless of the manner in which the classes to be taxed have been defined, the classification must be based upon real and substantial differences between persons taxed and those not taxed (*Klein, supra; City of Chicago* v. *Ames,* 365 Ill. 529, 7 N.E.2d 294), and the classification must bear some reasonable relationship to the object of the legislation (*Modern Dairy Co.* v. *Dep. of Revenue, supra*) or to public policy (*Reif* v. *Barrett,* 355 Ill. 104, 188 N.E. 889). In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. (Ill.Const., 1970, Art. IX, Sec. 2.) The constitutional mandate of uniformity of a tax may be violated by including within a class those not in fact within the class (*People ex rel. Holland Coal Co.* v. *Isaacs, supra; Svithiod Singing Club* v. *McKibbin,* 381 Ill. 194, 44 N.E.2d 904; *Scully* v. *Hallihan,* 365 Ill. 185, 6 N.E.2d 176; *Banghart* v. *Walsh,* 339 Ill. 132, 171 N.E. 154; *Wedesweiler* v. *Brundage,* 297 Ill. 228, 130 N.E. 520), as well as by excluding from a class those properly belonging to it (*Ohio Oil Co.* v. *Wright,* 386 Ill. 206, 53

N.E.2d 966; *City of Chicago* v. *Ames, supra; People ex rel. Holland Coal Co., supra; Lippman* v. *People,* 175 Ill. 101, 51 N.E. 872).

Counsel for defendants here seeks to uphold the validity of the tax by urging that it is impossible for a legislative body to consider every imaginable and exceptional case in enacting an ordinance. Further, counsel states that differences in businesses or business methods have been held to justify tax classifications. We are not convinced by this argument. It appears to us that the City, for some unknown reason, failed to insert the words "but shall not be limited to" immediately following the words "personal property means" in the Section 200.1-2 (5)(a) definition of "personal property."[4] However, the tax ordinance does not so read, and as it stands we can perceive no rational basis to justify the imposition of the tax upon the lease or rental of construction, demolition, household and office equipment where the tax is not imposed upon the lease or rental of many other items; *e.g.,* printing, telephone and industrial equipment and machinery. We can only conclude that the distinction between the class of those items of personal property which are subject to the tax and those not included is not one based upon any real and substantial difference. (*Klein, supra; City of Chicago, supra.*) Accordingly, we hold the tax ordinance to be invalid.

Inasmuch as this invalidity negates the tax itself, we need not answer further any remaining questions certified, and we will remand this cause for the disposition of any remaining issues consistent with the content of this opinion.

Order denying motion to dismiss is affirmed.
Cause remanded.

BARRETT and DRUCKER, JJ., concur.

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[4] The section would then read "As used in paragraph 200.1-2A, personal property means, *but shall not be limited to* • • •."

APPENDIX C

Section 200.1-2 of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

> There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on all transactions designated herein. . . . . :
>
> Transactions consummated in the City of Chicago involving the lease or rental of any personal property, valued in money, whether received in money or otherwise by an individual person, domestic or foreign association, company, or corporation or certificates of interest in a business conducted by a trustee or trustees, made after the 1st day of January, 1974, whether made upon or shown by the books of the person, association, company, corporation, or trustee, or by any paper or agreement or memorandum or other evidence of such lease or rental, when delivery or use also takes place in the City of Chicago.

Section 200.1-2 A(2) of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

> The ultimate incidence of and liability for payment of said tax shall be borne by the lessee involved in any such transaction. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of the person or persons making or effectuating the lease or rental to pay to the City of Chicago the tax provided by this Section; provided, however, that this subdivision shall not apply to any lease or rental wherein the lessee is a governmental entity or international organization and is not subject to the tax.

Section 200.1-2 A(5)(a) of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

As used in paragraph 200.1-2A, personal property means motor and other vehicles which shall include but are not limited to automobiles, automobile trailers, bicycles, motor driven bicycles, motorcycles, buses, trucks, truck tractors, truck trailers, construction and demolition equipment, which shall include but is not limited to ditch digging equipment, well boring apparatus, road construction and maintenance equipment such as spreaders, mixers, loaders, graders, rollers, scarifiers, scrapers, earth movers, power shovels, cranes, compressors, concrete mixers, garden and landscaping equipment, ladders, floor machines, searchlights, floodlights, hand and electrical tools, spraying equipment, and scaffolding; household and office equipment, which shall include but is not limited to carpets and rugs, chairs and tables, chinaware and glassware, furniture, beds, television and radio, washing machines, dryers and ironers, water softening equipment; clothing, including but not limited to formal wear and other types of clothing; office and computing equipment, including but not limited to data processing equipment, computers, accounting and bookkeeping machines, adding and calculating machines, typewriters, addressing machines, dictating machines, duplicating machines, mailing machines, copy machines; and such miscellaneous equipment as musical instruments.

Section 200.1-2(B) of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

[There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on all transactions designated herein. . . . :]

Transactions consummated in the City of Chicago involving transference of title to real property which is located within the City of Chicago as evidenced by the filing or recordation of a deed in the Office of the

Recorder of Deeds of Cook County or in the Office of the Registrar of Titles of Cook County made after the 1st day of January, 1974, by any person, domestic or foreign association, company, or corporation, or a trustee, or by delivery of any deed of said real property in the City of Chicago, and whether investing the owner with the beneficial interest in or legal title to said real property, or merely the possession or use thereof for any purpose, or to secure future payment of money or the future transfer of any such real property.

Section 200.1-2 B (2) of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

The ultimate incidence of and liability for payment of said tax shall be borne by the grantee or purchaser involved in any such transaction. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of the person or persons making or effectuating the sale, or transfer or registration to pay the tax provided by this Section; provided, however, that this subdivision shall not apply to any transfer wherein the vendor or transferor is a governmental entity or international organization and is not subject to the tax.

Section 200.1-3 of the Chicago Transaction Tax Ordinance, Municipal Code of Chicago, §§201.1 et seq. (1973):

A. Rates for Nonresidents. Notwithstanding the provisions of Section 200.1-2 of this Chapter, the rates of tax set forth in this Section shall apply in the case of those transactions made within the City of Chicago by a nonresident subject to the taxes imposed by Sections 200.1-2 A and B of this Chapter. On such transactions by nonresidents during the periods set forth in the following table, the rates of tax shall be the percentages set forth in such tables of the rates of tax

provided in Sections 200.1-2 A1 and B1 of this Chapter.

Period	Percentage of Rates of Tax Provided in Sections 200.1-2 A1 and B1 of this Chapter
January 1, 1974—December 31, 1974	95%
January 1, 1975—December 31, 1975	90%
January 1, 1976—December 31, 1976	80%
January 1, 1977—December 31, 1977	65%
January 1, 1978—Thereafter	50%

The tax so calculated shall not be carried out in its computation beyond four decimal points, that is, it shall be computed to the nearest one-hundreth of one percent.

Supreme Court, U.S.
FILED
OCT 4 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-387

RICHARD B. WILLIAMS and PEARL JOHNSON,

Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,

Respondents.

PATRICK E. GORMAN and DOROTHY GORMAN, et al.,

Petitioners,

vs.

CITY OF CHICAGO, etc., et al.,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

DANIEL PASCALE,
RICHARD F. FRIEDMAN,
Assistant Corporation Counsel,
Of Counsel.

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

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Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION

REASONS FOR DENYING THE WRIT

Summary

The petitioners fail to state why this case is appropriate for the granting of certiorari. Pursuant to Rule 19 of this court, petitioners must show that the state court decided "a federal question of substance not theretofore determined" by the Supreme Court or that

the state court decided a federal question "probably not in accord with the applicable decisions" of the Supreme Court. The petitioners do not attempt to rely on the first ground since it is obvious that the question of the limits of classification for local taxation purposes is not novel, having been before this court on many prior occasions. The cases cited in the petitioners' brief, such as *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973); and *Madden v. Kentucky*, 309 U.S. 83 (1940), demonstrate that this is true.

Rather, the petitioners argue that the judgment of the Illinois Supreme Court is contrary to prior decisions of this court. However, it is obvious at the outset that the Illinois Supreme Court based its decision on established principles articulated by this court in its numerous decisions applying the Equal Protection Clause to local taxation. In particular, the Illinois Supreme Court followed and cited *Lehnhausen v. Lake Shore Auto Parts Co.*

Not only did the Illinois Supreme Court state the appropriate standards, its judgment correctly applied those standards. The City of Chicago transaction tax ordinance taxed the lease of some, but not all conceivable kinds of personal property. The Illinois Supreme Court recognized the discretion reposed in local legislative bodies to impose taxes one step at a time, or to exempt items of property for administrative convenience or to advance other legislative policies. See opinion of the Illinois Supreme Court, Petition 10-11.

Similarly, the Illinois Supreme Court was correct in its judgment that the lower tax rate accorded nonresidents of the City of Chicago did not violate equal protection. It found that the distinction bore a reasonable relationship to the objective of the tax, and that the

distinction created by the City Council of the City of Chicago achieved a valid legislative goal. Although the petitioners argue strenuously in their brief (Petition 10-11) that the resident-non-resident distinction would not achieve these goals effectively, that argument is merely addressed to the wisdom of the legislative classification, not its validity. Neither this court nor the Illinois Supreme Court sits to review the wisdom of local legislative enactments.

I.

THE ILLINOIS SUPREME COURT RECOGNIZED AND PROPERLY APPLIED GOVERNING DECISIONS OF THIS COURT.

The petitioners state (Petition 7-8) the governing principles by which tax classifications are judged to be in compliance with the Equal Protection Clause. The respondents are in full agreement with petitioners' statement of those standards. And the Illinois Supreme Court opinion makes it clear that it, too, reached its decision applying the same standards.

For example, the petitioners correctly state the burden borne by persons challenging plans of local taxation is a "heavy burden." Petition 8. This is the same standard applied by the Illinois Supreme Court, which stated that "one who attacks [the legislative classification] has the burden of proving such classifications to be arbitrary and unreasonable." Petition 8a. The petitioners cite *Lehnhausen v. Lake Shore Auto Parts Co.* as establishing the criteria by which to judge the validity of legislative classifications, and the Illinois Supreme Court cited the same case. *Ibid.* In addition, the petitioners cite *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949) for the uncontested proposition that the legislative classification must have some relationship to

the object of the legislation. But this is precisely the standard articulated in the opinion of the Illinois Supreme Court, which stated "the classification must bear some reasonable relationship to the object of the legislation." *Ibid.* And in judging whether the classification met that standard, the Illinois Supreme Court stated, "We . . . do not concur with the argument that the definition contained in subsection 5 is somehow contrary to the intent and object of the tax. . . ." Petition 10a.

The petitioner states that the classification must be "palpably arbitrary or invidious" in order to be found to violate the Equal Protection Clause. But this was the standard, in almost the identical language, applied by the Illinois Supreme Court. It stated, "Furthermore, we are of the opinion that neither of the provisions of the ordinance . . . are otherwise patently arbitrary or unreasonable." Petition 10a.

There can be no doubt, therefore, that the Illinois Supreme Court clearly understood the standards which this court has held must be applied in judging legislative classification for tax purposes.

II.

THE ILLINOIS SUPREME COURT PROPERLY FOUND CONSTITUTIONAL THE CLASSIFICATION OF KINDS OF PROPERTY TAXED.

The petitioners challenge the correctness of the Illinois Supreme Court's judgment that the City of Chicago could properly tax the lease of specified kinds of personal property while allowing the lease of other personal property to be untaxed. (This issue is applicable only to *Williams v. City of Chicago.*) However, such classifications are presumed to be valid and there is a burden

upon the person attacking the legislation "to negative every conceivable basis which might support it." *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); *Madden v. Kentucky*, 309 U.S. 83 (1940); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973). The petitioners, however, entirely failed to sustain this burden. *Williams* was decided upon motion to dismiss and an interlocutory appeal to the Illinois Appellate Court upon questions certified by the trial court. (Rule 308 of the Rules of the Illinois Supreme Court permits such appeals of otherwise non-final orders.) The petitioners' sole attempt to "negative every conceivable basis which might support" the tax ordinance appeared in the complaint, which contained only conclusory allegations alleging the unconstitutionality of the ordinance. This was insufficient to sustain the burden. As the Illinois Supreme Court noted (Petition 11a), "in our opinion the complaints in both cases failed to allege a sufficient factual basis to overcome the presumptive constitutionality of the ordinance."

Not only did the petitioners fail to sustain their burden, but judged on the merits, the legislative classification was consistent with the Equal Protection Clause. The Fourteenth Amendment does not require a rigid scheme of literal equality; legislatures are permitted to attack problems one step at a time and are not required to address all evils or correct all problems at once. *Williams v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955). The Illinois Supreme Court, in addition, described and analyzed these valid legislative goals which supported the legislative decision to tax the lease of some property, but not other property. Petition 11a. For all these reasons, the Illinois Supreme Court was correct in its holding that the City Council of the City of Chicago might validly enact the classification in question.

III.

THE ILLINOIS SUPREME COURT WAS CORRECT IN HOLDING THAT RESIDENT-NON-RESIDENT DISTINCTION IS CONSISTENT WITH THE CONSTITUTION.

As with the classification of kinds of personal property transactions taxed, the petitioners failed to sustain their burden of showing the unconstitutionality of taxing transactions involving non-residents of Chicago at a lower rate than that paid by residents of the City. (This issue is raised in both *Gorman v. City of Chicago* and *Williams v. City of Chicago.*) Like *Williams*, no evidence was introduced in *Gorman*. It was decided in the trial court on a judgment on the pleadings; no facts of any substance were introduced outside of the complaint. The complaint, itself, was virtually identical to the complaint in *Williams v. City of Chicago*. In conclusory language, it alleged the unconstitutionality of the resident-non-resident distinction. As noted, the Illinois Supreme Court found that the complaints in both of these cases did not contain sufficient factual allegations to overcome the presumption of constitutionality. Petition 11a.

The thrust of petitioners' argument is that the residency distinction bears no relationship to the objective of the tax. They claim that a "transaction" is taxed, and the residency of the parties is irrelevant to the transaction. But this ignores the express words of the taxation ordinance, which provides that the burden of paying the tax rests upon the lessee (in transactions involving the transfer of personal property) or the purchaser (in transactions involving the transfer of real property). Municipal Code of Chicago, Illinois, Sections 200.1-2A(2), 200.1-2B(2), Petition 21a, 23a. The residency of such persons bears a very real relationship to the objective of the tax. Offering a lower tax to non-residents

recognizes that since they do not live within the limits of the City of Chicago, they have lesser need of city services. The petitioners are correct in stating that the "transaction" remains the same regardless of the residency of the parties to it. But the lower tax recognizes that city services are provided not to intangible "transactions" but to individuals—the persons upon whom the burden of paying the tax is laid.

The Illinois Supreme Court also discusses other reasons supporting the residency tax rate distinction. Since non-residents have less contact with city agencies, a lower rate may encourage the payment of tax which otherwise may be easy to evade. It also encourages persons from outlying areas to do business with Chicago businesses. In City of Chicago transactions, non-residents, by paying a lower tax rate, have a slight advantage over City of Chicago residents.

It should be noted that this court has previously upheld a differential tax rate distinguishing between residents and non-residents. *Madden v. Kentucky*, 309 U.S. 83 (1940). The petitioners fail to cite a single case in which this court has stricken down a tax offering an advantageous rate to non-residents.

CONCLUSION

No novel federal issues are involved in this case. The Illinois Supreme Court applied recognized standards in the proper manner in reaching its decision. For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

DANIEL PASCALE,
RICHARD F. FRIEDMAN,
Assistant Corporation Counsel,
Of Counsel.

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